

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

In the Matters of:

Application of Sections 251(b)(4) and
 224(f)(1) of the Communications Act of 1934,
 as amended, to Central Office Facilities of
 Incumbent Local Exchange Carriers

CC Docket No. 01-77

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COMMENTS OF
ONFIBER COMMUNICATIONS, INC.

OnFiber Communications, Inc. ("OnFiber"), hereby submits its Comments in support of the Petition for Declaratory Ruling filed by the Coalition of Competitive Fiber Providers requesting that the Federal Communications Commission (the "Commission") make an explicit determination that Sections 251(b)(4) and 224(f)(1) of the Act apply to the ducts, conduit and rights-of-way at the central office buildings of the incumbent local exchange carriers ("ILECs").¹

INTRODUCTION

On March 15, 2001, the Coalition of Competitive Fiber Providers (the "Coalition") petitioned the Commission for a declaratory ruling that ILECs must provide competitive fiber carriers nondiscriminatory access to central office ducts, conduits and rights-of-way to satisfy the statutory obligations under Sections 251(b)(4) and 224(f)(1). In its Petition, the Coalition demonstrated that the ILECs' refusal to acknowledge their obligations to provide nondiscriminatory access to the ducts, conduits and rights-of-way at their central offices justified the Commission granting a declaratory ruling on an expedited basis.

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 List A B C D E

¹ *Application of Sections 251(b)(4) and 224(f)(1) of the Communications Act of 1934, as amended, to Central Office Facilities of Incumbent Local Exchange Carriers*, Petition for Declaratory Ruling filed by the Coalition of Competitive Fiber providers, CC Docket No. 01-77 (Mar. 15, 2001) ("Coalition Petition").

OnFiber is a new provider of high-bandwidth, optical special access service, primarily to telecommunications carriers and internet service providers. OnFiber plans to offer its fiber-based telecommunications services in 26 metropolitan areas across the country. As a new entrant currently creating its competitive nationwide network, OnFiber seeks to access its customers in the most efficient manner that is technically feasible. For its telecommunications carrier customers, efficiency may often require that OnFiber connect with its carrier customers at the ILECs' central office.

Denying competitive local exchange carriers ("CLECs") access to central office ducts, conduits and rights-of-way, therefore, impedes every facet of competition in the local marketplace by introducing unnecessary costs and delays merely to increase all carriers dependence upon the incumbents' networks. The modifications and clarifications to the federal regulations that the Coalition Petition requests will ensure the survival of competition by requiring the ILECs' to honor their obligation to provide nondiscriminatory access to their central office ducts, conduits and rights-of-way in a procompetitive manner. In support of the Coalition Petition, OnFiber urges the Commission to adopt the proposed requirements to represent the Commission's interpretation of the ILECs' obligations.

DISCUSSION

In implementing the statutory initiatives Congress undertook to open the incumbents' networks, the Commission has consistently established a regulatory scheme that allows for the efficient interconnection of networks—incumbent and competitive. The Coalition Petition demonstrates that Section 224(f)(1) applies to ILEC central offices, as it does to all ILEC or utility structures, requiring open, nondiscriminatory access to those ducts, conduits and rights-of-

way.² The Petition also shows that the ILECs deny competitors access to its central office ducts, conduits and rights-of-way.³ The Petition, therefore, requests that the Commission quickly declare that ILECs must provide CLECs and other telecommunications carriers non-discriminatory access to these facilities to encourage provision of competitive transport services.⁴

The Petition also asks that telecommunications carriers be permitted, pursuant to Section 224(f)(1), to install in ILEC central offices equipment typically used as part of transmission facilities, such as connector blocks, distribution frames, signal regenerators, and power supplies.⁵ In addition, the petition urges the Commission to direct ILECs to establish more reasonable practices concerning access to manholes nearest the central office.⁶ Because the requirements proposed by the Coalition will certainly increase CLECs' ability to compete more efficiently— which, in turn, leads to greater service choices and lower prices for consumers—OnFiber urges the Commission to grant the Coalition Petition and quickly implement its requested relief.

I. THE 1996 ACT AUTHORIZES THE COMMISSION TO GUARANTEE CLECs NONDISCRIMINATORY ACCESS TO THE DUCTS, CONDUITS, AND RIGHTS-OF-WAY ASSOCIATED WITH AN ILEC CENTRAL OFFICE.

The significant benefits arising from the nondiscriminatory access requested in the Petition truly warrant the application of Sections 251(b)(4) and 224(f)(1) of the Act to the ducts, conduits and rights-of-way at the ILEC central office buildings. The Commission has noted its authority to adopt federal regulations that:

facilitate administration of sections 251 and 252, expedite negotiations and arbitrations by narrowing the potential range of dispute where appropriate to do so, offer uniform interpretations of the law that might not otherwise emerge until

² Coalition Petition at 5.

³ Coalition Petition at 4-5.

⁴ Coalition Petition at 5-15, 19.

⁵ Coalition Petition at 16-18.

⁶ Coalition Petition at 18.

after years of litigation, remedy significant imbalances in bargaining power, and establish the minimum requirements necessary to implement the nationwide competition that Congress sought to establish.⁷

Each of these objectives would be achieved by Commission action on opening the ducts, conduits and rights-of-way as presented in the Coalition Petition.

Granting the Petition clearly assists in administering the ILECs' obligations under Section 251 and expedites negotiations and arbitrations under Section 252 by clarifying the obligations arising from Section 251(b)(4). Section 251(b)(4) includes the duty of a LEC to "afford access to the poles, ducts, conduits and rights-of-way of such carriers to competing providers of telecommunications services on rates, terms and conditions that are consistent with section 224."⁸ Pursuant to Section 224 (f)(1) of the 1996 Act, an ILEC "shall provide . . . any telecommunications carrier with nondiscriminatory access to *any* pole, duct, conduit, or right-of-way owned or controlled by it."⁹

The language of the statute is unequivocal that the statutory obligation includes *any* duct, conduit or right-of-way owned or controlled by an ILEC. An ILEC owns and controls extensive network of ducts, conduits, and rights-of-way leading to, and inside, its central offices. With no expressed exemption for those facilities at or inside an ILEC central office, Congress clearly intended for ILECs to provide CLECs with nondiscriminatory access to the ducts, conduits, and rights-of-way associated with its central offices in order to foster competition by ensuring the availability of access to new telecommunications entrants.¹⁰

⁷ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325, ¶ 41 (rel. Aug. 6, 1996) ("*Local Competition Order*").

⁸ 47 U.S.C. § 251(b)(4).

⁹ 47 U.S.C. § 224(f)(1) (*emphasis added*).

¹⁰ S. Conf. Ref. No. 104-230, 104th Cong., 2nd Sess. (1996) ("1996 Conference Report") at 113.

In recognizing the Congressional intent of Section 224, the Commission also determined that there should be no regulatory or ILEC-imposed restrictions on the CLECs' right to access the ILEC facilities under Section 224. The Commission in its *Competitive Networks Order* reiterated the ILECs' obligations by stating that "an incumbent LEC must grant other telecommunications carriers . . . access to its . . . ducts, conduits, and rights-of-way[.]"¹¹ Specifically, the Commission found that Section 224(f)(1) requires "non-discriminatory access to any pole, duct, conduit, or right-of-way owned or controlled" by a utility "without qualification"¹² and "not limited by location".¹³ These obligations clearly extend to providing access to the ducts, conduit and rights-of-way near to, leading to, or inside the ILECs' central offices.

Despite these clear statutory and regulatory requirements, the ILECs refuse to allow CLECs nondiscriminatory access to ducts, conduits and rights-of-way associated with their central offices. The rules that the Petition requests will remedy significant imbalances in bargaining power between CLECs and ILECs, while allowing for nationwide competition not only for fiber-based transport services, but for all telecommunications services. Indeed, this Petition provides the Commission with the opportunity to address carrier concerns comprehensively, providing uniformity and certainty in the law that will foster the competitive telecommunications marketplace.

¹¹ *Promotion of Competitive Networks in Local Telecommunications, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Review of Sections 68.104, and 68.213 of the Commissions Rules*, WT Docket No. 99-217, CC Docket Nos. 96-97 and 88-57; First Report and Order and FNPRM in WT Docket No. 99-217, Fifth Report and Order in CC Docket No. 96-98 and Fourth Report and Order in CC Docket No. 88-57, FCC 00-377 (rel. Oct. 25, 2000) ("*Competitive Networks Order*") at ¶ 72 citing 47 U.S.C. § 224, as amended by the 1996 Act, § 703.

¹² *Competitive Networks Order* at ¶ 80

¹³ *Competitive Networks Order* at ¶ 76.

II. FORBIDDING CLEC ACCESS TO ILEC CENTRAL OFFICE VIOLATES CLEAR LANGUAGE AND CONTRADICTS THE OBJECTIVES OF THE 1996 ACT BY HINDERING COMPETITIVE ENTRY INTO LOCAL TELECOMMUNICATIONS MARKET.

As a result of the introduction of competition for certain facilities, particularly dedicated local transport, carriers now have the choice to purchase certain facilities from other competitive carriers. Although carrier customers now use other CLECs' services, the ILECs remain the sole provider of some network elements, such as local loops. Thus, CLECs routinely find themselves in the position of having to interconnect to both the ILEC and other CLECs in order to assemble the most efficient network.

To interconnect with the ILEC network, carriers typically collocate equipment in the ILEC central office. The central office, where numerous carrier customers have placed equipment, is the location at which a competitive carrier can access many of its customers most efficiently. By contrast, requiring competitive carriers to access their carrier customers at sites constructed by each competitor near each central office would eliminate the efficiencies of having numerous customers at one centralized location, while removing any incentive carriers have to use a competitive service.

Telecommunications carriers, whether incumbent or competitive, should strive for maximum efficiency to minimize the total costs to consumers. By refusing competitive providers the ability to access their own customers at the most efficient point, ILECs—contravening both the letter and the spirit of the Act—deny those carriers any meaningful opportunity to compete. Instead, as the Petition indicates, “requiring [competitive fiber providers] to connect with CLECs only outside of ILEC central offices would limit CLECs to obtaining transport from the ILEC or constructing new facilities to a meet point with the

[competitive fiber provider].”¹⁴ The ILECs’ policies denying competitors access to their central-office ducts, conduits and rights-of-way merely serve to discourage the potential customers of those carriers by imposing unnecessary costs and delays through the imposition of additional, redundant facilities.

A. Denying Access to Central Office Ducts, Conduits and Rights-of-Way Forces Competitors to Construct Duplicative Networks.

The 1996 Act imposes an obligation on ILECs to open their networks to competition to prevent ILECs from forcing competitors to build their own networks.¹⁵ The Commission also has recognized that Congress enacted the 1996 Act in an effort to direct the incumbents to open the local telecommunications market to facilities-based competition to eliminate the need for competitive carriers to construct entirely duplicative networks.¹⁶ Thus, ILECs cannot force CLECs to construct their own networks in parallel with the network that the ILECs have obtained through the privilege of their monopolistic position. The ILECs, however, are demanding exactly this by refusing CLECs nondiscriminatory access to their central-office ducts, conduits and rights-of-way.

For a carrier customer to connect with the ILEC network inside the central office and then connect to a competitive carrier in a separate location outside the central office would require unnecessary installation of duplicative facilities and equipment. For example, if CLEC 1 seeks to interconnect with CLEC 2, then CLEC 1 must get its traffic to CLEC 2. To do so in the central office requires only a simple cross connect. To do so outside the central office, however, would require CLEC 1 to transport the traffic (using ILEC facilities) from the central office to

¹⁴ Coalition Petition at 8.

¹⁵ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); 47 U.S.C. § 251(c); see also *Local Competition Order* at ¶ 366.

¹⁶ *Local Competition Order* ¶¶ 10-15.

the outside point of interconnection with CLEC 2, who may then need to transport the traffic back to the central office. Further, CLECs 1 and 2 will need to construct a location at which they would interconnect. Thus, there will be at least two sets of unnecessary facilities being constructed. OnFiber, therefore, supports the Coalition proposal to ensure the nondiscriminatory access required by Section 224 apply to the central office ducts, conduits and rights-of-way to avoid the construction of unnecessarily duplicative facilities.

B. Denying Access to Central Office Ducts, Conduits and Rights-of-Way Merely Serves to Increase CLECs' Dependence upon ILEC's networks.

In implementing the 1996 Act, the Commission recognized the importance of a competitor's ability to "provide services without having to rely on their rivals for critical components of their offerings."¹⁷ Forcing carriers to build duplicative facilities outside the ILEC central office requires that those carriers purchase *more, not fewer*, facilities from the ILECs to access the carrier customers within the central office. The Commission has stated that this type of connection "offers a potential bottleneck, and incumbents have the incentive to impose unreasonable rates, terms and conditions for [such] facilities."¹⁸ The inefficiencies caused by such duplicative networks, therefore, also eliminates choices for carrier customers and forces them to purchase all elements from the ILECs.

Using a connection outside the central office requires carriers to purchase additional cabling from its collocation space to the ILECs' main distribution frame ("MDF") as well as

¹⁷ *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-141, ¶¶ 4, 23 (rel. July 7, 1999) ("Moreover, only facilities-based competition can fully unleash competing providers' abilities and incentives to innovate, both technologically and in service development, packaging, and pricing. . . . In order for competitive networks to develop, the incumbent LECs' bottleneck control over interconnection must dissipate."). See also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238 (rel. Nov. 5, 1999) ("UNE Remand Order") ¶ 7.

¹⁸ *UNE Remand Order* at ¶ 179.

possibly pay monthly recurring charges for the transport facility itself and incur the delay in obtaining the connection from ILECs. Requiring carriers to connect with other carriers outside of the central office requires the additional purchase of entrance facilities, conduit space and extra cross connections from the ILECs. Indirect connections between competitors outside the central office would serve to add revenue to the ILECs, while rendering the use of competitive transport providers cost-prohibitive for competitors.

The prices of the components required to complete an indirect cross-connection with another CLEC outside the central office vary from ILEC to ILEC, but are consistently costly. The absence of nondiscriminatory access to ILEC central office ducts, conduits and rights-of introduces unnecessary costs and delays, and increases all carriers' dependence on the incumbents' networks. Conversely, rules explicitly applying Section 224(f)(1) obligations to these facilities will create substantial new options for CLECs to obtain access to ILEC central offices. Thus, OnFiber encourages the Commission to recognize that Section 224 must apply to the central office ducts, conduits and rights-of-way to decrease the unnecessary reliance upon additional facilities.

C. Denying Access to Central Office Ducts, Conduits and Rights-of-Way Discriminates Against Efficient Competitive Networks.

Section 256 of the 1996 Act charged the Commission with fostering “the effective and efficient interconnection of public telecommunications networks,”¹⁹ which is not confined merely to interconnection with the ILEC network.²⁰ In establishing such a directive, Congress recognized that to foster genuine competition, the Commission must focus on promoting

¹⁹ 47 U.S.C. § 256(b)(1).

²⁰ 47 U.S.C. § 256(d) (making clear that the interconnection the Act is concerned with is between “two or more public telecommunications networks used to provide telecommunications service.”).

interconnection arrangements based on the efficiencies of that arrangement. A refusal to permit CLECs access to ILEC central office ducts, conduits and rights-of-way would, in turn, impose significant *inefficiencies* on CLECs.

Efficiency reasons for requiring ILECs to provide nondiscriminatory access to their central office ducts, conduits and rights-of-way are persuasive. The unnecessary cabling required for connections outside the central office can exhaust cabling space, such as conduits, in the central office. Moreover, direct connections outside the ILEC central office may also further exhaust space in entrance facilities into the central office. Incumbents cannot argue credibly about space exhaustion while also requiring a competitor to take up more space than is actually warranted for efficient connections with carrier customers inside the central office.

As with all business decisions, carrier customers would decide to use the transport facilities from carriers other than the ILECs depending on such factors as availability and costs. Competitive carriers have successfully established connections with the networks of their carrier customers in a competitive environment. Indeed, carriers have extensive experience connecting effectively and efficiently with other competitive carriers inside third party buildings, characterized as “CLEC hotels”, for the purpose of transmitting data traffic at market rates.

In contrast, the inability to connect directly with other carriers inside buildings where carrier customers are located, which happen to be ILEC central offices, is a distinct disincentive to use competitor networks. As the Coalition explained in its Petition, “[g]ranting [competitive fiber providers] the right to bring fiber directly into central offices will reduce the expense and time required for a CLEC to expand the number of central offices in which it operates. The availability of alternative transport facilities will enable CLECs to provide service to more

consumers at lower prices.”²¹ Generally speaking, there are certain instances where the simplest, easiest and least expensive means for connecting with another CLEC’s network is at the ILECs’ central office. Accordingly, OnFiber recommends that the Commission grant the Coalition Petition in its entirety to guarantee the ability of all carriers to compete effectively without the unnecessary inefficiencies proposed by the ILECs.


CONCLUSION

For the foregoing reasons, OnFiber urges the Commission to grant the requests presented by the Coalition of Competitive Fiber Providers in its Petition for Declaratory Ruling.

Respectfully submitted,

ONFIBER COMMUNICATIONS, INC.

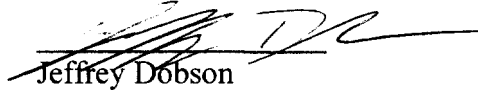
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CERTIFICATE OF SERVICE

I, Jeffrey Dobson, hereby certify that on this the 23rd day of April, 2001, I have served a copy of the foregoing document via *hand delivery and U.S. Mail, postage pre-paid, to the following:



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